HON'BLE SRI G.S. SINGHVI, THE CHIEF JUSTICE

AND

HON'BLE SRI JUSTICE G. V.SEETHAPATHY

Writ Appeal No. 926 of 2005

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Between:

The A.P.State Federation of Coop. Spinning Mills Limited,
(A.P.SPINFED), 5th Floor, B.R.K.R Bhavan, Hyderabad,
rep. by its Liquidator

……Appellant

And

K.Ram Murthy and another

……Respondents

:: JUDGMENT ::

Counsel for the Appellant : Sri M.Rama Rao
for Sri K.Rajanna

Counsel for Respondent No.1 : Sri V.Ramu representing
Sri S.Ravindranath

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August 31, 2006

Per G.S. SINGHVI, CJ

Although the case has been listed today for consideration of Review WAMP No.1818 of 2006 filed by the appellant for review of order dated 26-6-2006 passed in WAVMP No.274 of 2006 in WAMP No.1765 of 2005 in Writ Appeal No.926 of 2005, learned counsel for the parties made an agreed statement that the Court may dispose of the main appeal.

The Facts:

Respondent No.1 joined service as Assistant Spinning Master in Nellore Cooperative Spinning Mills Limited on 09-12-1981. He was promoted as Deputy Spinning Master with effect from 20-06-1984. In 1987, he was appointed as Spinning Master on contract basis for a period of three years commencing from 02-11-1987. He claims to have been confirmed on the post of Spinning Master and continued in that capacity till the termination of service with effect from 30-7-1999.

Respondent No.1 challenged the order passed by Vice-Chairman and Managing Director of Andhra Pradesh State Federation of Cooperative Spinning Mills Limited (for short 'the Federation') vide which his prayer for grant of benefit under the Voluntary Retirement Scheme was declined and his services were terminated. He pleaded that the decision of the competent authority of the Federation is discriminatory and violative of his right to equality because benefit of Voluntary Retirement Scheme had been extended to other employees.

The learned Single Judge relied on the judgment dated 31-4-1997 of the Division Bench in Writ Appeal No.1071 of 1993, and quashed order dated 30-7-1999. He also declared that the writ petitioner (respondent No.1 herein) is entitled to continue in service

with all service benefits, as per the terms of contract.

Learned counsel for the appellant argued that the order under challenge is liable to be set aside because the judgment of the Division Bench in Writ Appeal No.1071 of 1993 - **P.V.Swaminathan Vs. A.P State Federation of Cooperative Spinning Mills Limited**, which constitutes the foundation of the direction given by the learned Single Judge for reinstatement of respondent No.1, has been virtually set aside by the Supreme Court in Civil Appeal No.5037 of 1997, **A.P State Federation of Cooperative Spinning Mills Limited and another vs. P.V. Swaminathan** decided on 31-01-2001. He submitted that while approving the reasons recorded by the Division Bench for nullifying the termination of the services of **P.V. Swaminathan** with effect from 10-6-1003, the Supreme Court made it clear that he will not be entitled to reinstatement.

Learned counsel for respondent No.1 submitted that on the date of decision of the writ petition and disposal of WAVMP No.274 of 2006, he was not aware of the fact that the judgment of the Division Bench in **P.V.Swaminathan**'s case (supra) has been modified by the Supreme Court and, therefore, the same could not be brought to the notice of the learned Single Judge.

We have given serious thought to the entire matter. A reading of order dated 31-1-2001 passed in Civil Appeal No.5037 of 1997, **A.P. State Federation of Cooperative Spinning Mills Limited and another v. P.V.Swaminathan** shows that while approving the reasons assigned by the Division Bench for nullifying the action of the employer i.e. the Federation to terminate the services of the respondent, the Supreme Court categorically held that he shall not be entitled to reinstatement. This is evinced from the last two paragraphs of the order of the Supreme Court, which are extracted below:

> "In fact, the letter of the Commissioner of Handlooms and Director of Handlooms and Textiles dated:19-05-1993 was the foundation of the employer to terminate the services and as such the Division Bench of Andhra Pradesh High Court was justified in holding that the order of termination is based upon on misconduct, though on the face of it, it is innocuous in nature. We, therefore, do not find any infirmity with the said conclusion of the Division Bench of the Andhra Pradesh High Court requiring our interference.
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> The period of appointment of the respondent being for a period of 3 years, it stood expired on 06-08-1994. The order of termination was passed on 10-06-1993. Notwithstanding the conclusion that the order of termination is vitiated, the respondent cannot seek enforcement of reinstatement by way of a Mandamus but all the same he would be entitled to all his benefits flowing from the terms of appointment for the period 10-06-1993 to 06-08-1994. The appellant Federation is therefore directed to pay the necessary pecuniary benefits flowing from this direction of ours to the respondent within a period of 3 months from today after deducting the wages for 3 months which had been paid to him while passing the order of termination in lieu of notice. The appeal is disposed of accordingly."

In view of the aforementioned order of the Supreme Court, we have no hesitation to set aside the direction given by the learned Single Judge for reinstatement of respondent No.1. We are sure that if the order of the Supreme Court had been brought to the notice of the learned Single Judge, then he would have adjudicated the writ petition on merits after examining the rival pleadings and contentions and would not have disposed of the writ petition simply by relying on the judgment of the Division Bench.

We would have ourselves adjudicated on the merits of the prayer made by respondent No.1 in the writ petition, but refrain from adopting that course because adjudication of the case by the Division

Bench would deprive either of the parties the right to prefer appeal against the order of the Single Bench.

In the premise aforesaid, writ appeal is allowed. The order of the learned Single Judge is set aside with the direction that Writ Petition No.16497 of 1999 be listed for fresh adjudication before an appropriate Single Bench as per roaster.

As a sequel to disposal of the main appeal, Review WAMP No.1818 of 2006 filed by the appellant is disposed of as infructuous.

G.S.SINGHVI, CJ

G.V. SEETHAPATHY,J

31-08-2006
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